

AMENDED IN SENATE APRIL 19, 2007

AMENDED IN SENATE APRIL 9, 2007

SENATE BILL

No. 713

Introduced by Senator Lowenthal
(Principal coauthor: Senator Cedillo)

February 23, 2007

An act to amend Section 50199.20 of, and to repeal Chapter 3.7 (commencing with Section 50199.50) of Part 1 of Division 31 of, the Health and Safety Code, and to amend Sections 12206, 17058, ~~23608.2~~, and 23610.5 of, *and to repeal Sections 17053.14, 23608.2, and 23608.3 of*, the Revenue and Taxation Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 713, as amended, Lowenthal. Farmworker housing assistance.

Existing law establishes a low-income housing tax credit program, administered by the California Tax Credit Allocation Committee, which provides procedures and requirements for the allocation of state tax credit amounts among low-income housing projects based on federal law. Existing law also establishes a farmworker housing assistance program and prescribes requirements for claiming tax credits under the program, including a requirement that expenditures upon which the amount of the credit is based shall be eligible costs, as defined, and a limitation on the amount of development fees that may be included as eligible costs.

This bill would repeal the farmworker housing assistance program and, instead require that an amount specified within those tax credit provisions be set aside for projects housing farmworker households, as provided. This bill would, in the case of a partnership, require the

distribution of the credits to partners based upon the partnership agreement.

This bill would also repeal specified existing tax credits for farmworker housing authorized under the Personal Income Tax Law and the Corporation Tax Law.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 50199.20 of the Health and Safety Code
2 is amended to read:

3 50199.20. (a) Not less than 20 percent of the federal ceiling
4 on low-income housing tax credits shall be set aside for allocation
5 to rural areas as defined in Section 50199.21. Any amount of credit
6 set aside for rural areas remaining after the ranking of credits in
7 the final cycle of any calendar year shall be available for allocation
8 to any eligible project.

9 (b) Up to 2 percent of the low-income housing tax credit
10 available under this chapter and Sections 12206, 17058, and
11 23610.5 of the Revenue and Taxation Code may be set aside for
12 small developments as determined by the committee. Any amount
13 of credit set aside for small developments remaining after the
14 ranking of projects in the final cycle of any calendar year shall be
15 available for allocation to any eligible project.

16 (c) *Not less than the amount specified in paragraph (4) of*
17 *subdivision (g) of Section 23610.5 of the Revenue and Taxation*
18 *Code shall be set aside for projects housing farmworker*
19 *households.*

20 ~~(e) Not less than the amount specified in subdivision (e) of~~
21 ~~Section 23608.2 of the Revenue and Taxation Code shall be set~~
22 ~~aside for projects housing farmworker households. The amount~~
23 ~~specified in subdivision (e) of Section 23608.2 of the Revenue and~~
24 ~~Taxation Code shall be in addition to the state credits described~~
25 ~~in subdivision (g) of Section 12206 of the Revenue and Taxation~~
26 ~~Code. The farmworker credits shall be allocated in the same manner~~
27 ~~as the state low income housing tax credits described in Sections~~
28 ~~12206, 17058, and 23610.5 of the Revenue and Taxation Code.~~

29 SEC. 2. Chapter 3.7 (commencing with Section 50199.50) of
30 Part 1 of Division 31 of the Health and Safety Code is repealed.

1 SEC. 3. Section 12206 of the Revenue and Taxation Code is
2 amended to read:

3 12206. (a) (1) There shall be allowed as a credit against the
4 “tax” (as defined by Section 12201) a state low-income housing
5 tax credit in an amount equal to the amount determined in
6 subdivision (c), computed in accordance with Section 42 of the
7 Internal Revenue Code, except as otherwise provided in this
8 section.

9 (2) “Taxpayer,” for purposes of this section, means the sole
10 owner in the case of a “C” corporation, the partners in the case of
11 a partnership, and the shareholders in the case of an “S”
12 corporation.

13 (3) “Housing sponsor,” for purposes of this section, means the
14 sole owner in the case of a “C” corporation, the partnership in the
15 case of a partnership, and the “S” corporation in the case of an “S”
16 corporation.

17 (b) (1) The amount of the credit allocated to any housing
18 sponsor shall be authorized by the California Tax Credit Allocation
19 Committee, or any successor thereof, based on a project’s need
20 for the credit for economic feasibility in accordance with the
21 requirements of this section.

22 (A) The low-income housing project shall be located in
23 California and shall meet either of the following requirements:

24 (i) The project’s housing sponsor shall have been allocated by
25 the California Tax Credit Allocation Committee a credit for federal
26 income tax purposes under Section 42 of the Internal Revenue
27 Code.

28 (ii) It shall qualify for a credit under Section 42(h)(4)(B) of the
29 Internal Revenue Code.

30 (B) The California Tax Credit Allocation Committee shall not
31 require fees for the credit under this section in addition to those
32 fees required for applications for the tax credit pursuant to Section
33 42 of the Internal Revenue Code. The committee may require a
34 fee if the application for the credit under this section is submitted
35 in a calendar year after the year the application is submitted for
36 the federal tax credit.

37 (C) A partner’s distributive share of a credit allowed under this
38 section shall be determined by the partnership agreement.

1 (2) (A) The California Tax Credit Allocation Committee shall
2 certify to the housing sponsor the amount of tax credit under this
3 section allocated to the housing sponsor for each credit period.

4 (B) In the case of a partnership or an “S” corporation, the
5 housing sponsor shall provide a copy of the California Tax Credit
6 Allocation Committee certification to the taxpayer.

7 (C) The taxpayer shall attach a copy of the certification to any
8 return upon which a tax credit is claimed under this section.

9 (D) In the case of a failure to attach a copy of the certification
10 for the year to the return in which a tax credit is claimed under this
11 section, no credit under this section shall be allowed for that year
12 until a copy of that certification is provided.

13 (E) All elections made by the taxpayer pursuant to Section 42
14 of the Internal Revenue Code shall apply to this section.

15 (F) No credit shall be allocated under this section to buildings
16 located in a difficult development area or a qualified census tract
17 as defined in Section 42 of the Internal Revenue Code for which
18 the eligible basis of a new building or the rehabilitation expenditure
19 of an existing building is 130 percent of that amount pursuant to
20 Section 42(d)(5)(C) of the Internal Revenue Code, unless the
21 committee reduces the amount of federal credit, with the approval
22 of the applicant, so that the combined amount of federal and state
23 credit shall not exceed the total credit allowable pursuant to this
24 section and Section 42(b) of the Internal Revenue Code, computed
25 without regard to Section 42(d)(5)(C) of the Internal Revenue
26 Code.

27 (c) Section 42(b) of the Internal Revenue Code shall be modified
28 as follows:

29 (1) In the case of any qualified low-income building that receives
30 an allocation after 1989 and is a new building not federally
31 subsidized, the term “applicable percentage” means the following:

32 (A) For each of the first three years, the percentage prescribed
33 by the Secretary of the Treasury for new buildings that are not
34 federally subsidized for the taxable year, determined in accordance
35 with the requirements of Section 42(b)(2) of the Internal Revenue
36 Code, in lieu of the percentage prescribed in Section 42(b)(1)(A)
37 of the Internal Revenue Code.

38 (B) For the fourth year, the difference between 30 percent and
39 the sum of the applicable percentages for the first three years.

1 (2) In the case of any qualified low-income building that receives
2 an allocation after 1989 and that is a new building that is federally
3 subsidized or that is an existing building that is “at risk of
4 conversion,” the term “applicable percentage” means the following:

5 (A) For each of the first three years, the percentage prescribed
6 by the Secretary of the Treasury for new buildings that are federally
7 subsidized for the taxable year.

8 (B) For the fourth year, the difference between 13 percent and
9 the sum of the applicable percentages for the first three years.

10 (3) For purposes of this section, the term “at risk of conversion,”
11 with respect to an existing property means a property that satisfies
12 all of the following criteria:

13 (A) The property is a multifamily rental housing development
14 in which at least 50 percent of the units receive governmental
15 assistance pursuant to any of the following:

16 (i) New construction, substantial rehabilitation, moderate
17 rehabilitation, property disposition, and loan management set-aside
18 programs, or any other program providing project-based assistance
19 pursuant to Section 8 of the United States Housing Act of 1937,
20 Section 1437f of Title 42 of the United States Code, as amended.

21 (ii) The Below-Market-Interest-Rate Program pursuant to
22 Section 221(d)(3) of the National Housing Act, Sections
23 1715l(d)(3) and (5) of Title 12 of the United States Code.

24 (iii) Section 236 of the National Housing Act, Section 1715z-1
25 of Title 12 of the United States Code.

26 (iv) Programs for rent supplement assistance pursuant to Section
27 101 of the Housing and Urban Development Act of 1965, Section
28 1701s of Title 12 of the United States Code, as amended.

29 (v) Programs pursuant to Section 515 of the Housing Act of
30 1949, Section 1485 of Title 42 of the United States Code, as
31 amended.

32 (vi) The low-income housing credit program set forth in Section
33 42 of the Internal Revenue Code.

34 (B) The restrictions on rent and income levels will terminate or
35 the federal insured mortgage on the property is eligible for
36 prepayment anytime within five years before or after the date of
37 application to the California Tax Credit Allocation Committee.

38 (C) The entity acquiring the property enters into a regulatory
39 agreement that requires the property to be operated in accordance

1 with the requirements of this section for a period equal to the
2 greater of 55 years or the life of the property.

3 (D) The property satisfies the requirements of Section 42(e) of
4 the Internal Revenue Code regarding rehabilitation expenditures,
5 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
6 apply.

7 (d) The term “qualified low-income housing project” as defined
8 in Section 42(c)(2) of the Internal Revenue Code is modified by
9 adding the following requirements:

10 (1) The taxpayer shall be entitled to receive a cash distribution
11 from the operations of the project, after funding required reserves,
12 which, at the election of the taxpayer, is equal to:

13 (A) An amount not to exceed 8 percent of the lesser of:

14 (i) The owner equity which shall include the amount of the
15 capital contributions actually paid to the housing sponsor and shall
16 not include any amounts until they are paid on an investor note.

17 (ii) Twenty percent of the adjusted basis of the building as of
18 the close of the first taxable year of the credit period.

19 (B) The amount of the cashflow from those units in the building
20 that are not low-income units. For purposes of computing cashflow
21 under this subparagraph, operating costs shall be allocated to the
22 low-income units using the “floor space fraction,” as defined in
23 Section 42 of the Internal Revenue Code.

24 (C) Any amount allowed to be distributed under subparagraph
25 (A) that is not available for distribution during the first five years
26 of the compliance period may accumulate and be distributed any
27 time during the first 15 years of the compliance period but not
28 thereafter.

29 (2) The limitation on return shall apply in the aggregate to the
30 partners if the housing sponsor is a partnership and in the aggregate
31 to the shareholders if the housing sponsor is an “S” corporation.

32 (3) The housing sponsor shall apply any cash available for
33 distribution in excess of the amount eligible to be distributed under
34 paragraph (1) to reduce the rent on rent-restricted units or to
35 increase the number of rent-restricted units subject to the tests of
36 Section 42(g)(1) of the Internal Revenue Code.

37 (e) The provisions of Section 42(f) of the Internal Revenue Code
38 shall be modified as follows:

1 (1) The term “credit period” as defined in Section 42(f)(1) of
2 the Internal Revenue Code is modified by substituting “four taxable
3 years” for “10 taxable years.”

4 (2) The special rule for the first taxable year of the credit period
5 under Section 42(f)(2) of the Internal Revenue Code shall not apply
6 to the tax credit under this section.

7 (3) Section 42(f)(3) of the Internal Revenue Code is modified
8 to read:

9 If, as of the close of any taxable year in the compliance period,
10 after the first year of the credit period, the qualified basis of any
11 building exceeds the qualified basis of that building as of the close
12 of the first year of the credit period, the housing sponsor, to the
13 extent of its tax credit allocation, shall be eligible for a credit on
14 the excess in an amount equal to the applicable percentage
15 determined pursuant to subdivision (c) for the four-year period
16 beginning with the later of the taxable years in which the increase
17 in qualified basis occurs.

18 (f) The provisions of Section 42(h) of the Internal Revenue
19 Code shall be modified as follows:

20 (1) Section 42(h)(2) of the Internal Revenue Code shall not be
21 applicable and instead the following provisions shall be applicable:

22 The total amount for the four-year credit period of the housing
23 credit dollars allocated in a calendar year to any building shall
24 reduce the aggregate housing credit dollar amount of the California
25 Tax Credit Allocation Committee for the calendar year in which
26 the allocation is made.

27 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
28 (7), and (8) of Section 42(h) of the Internal Revenue Code shall
29 not be applicable.

30 (g) The aggregate housing credit dollar amount that may be
31 allocated annually by the California Tax Credit Allocation
32 Committee pursuant to this section, Section 17058, and Section
33 23610.5 shall be an amount equal to the sum of all the following:

34 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
35 year, and, for the 2002 calendar year and each calendar year
36 thereafter, seventy million dollars (\$70,000,000) increased by the
37 percentage, if any, by which the Consumer Price Index for the
38 preceding calendar year exceeds the Consumer Price Index for the
39 2001 calendar year. For the purposes of this paragraph, the term

1 “Consumer Price Index” means the last Consumer Price Index for
2 all urban consumers published by the federal Department of Labor.

3 (2) The unused housing credit ceiling, if any, for the preceding
4 calendar years.

5 (3) The amount of housing credit ceiling returned in the calendar
6 year. For purposes of this paragraph, the amount of housing credit
7 dollar amount returned in the calendar year equals the housing
8 credit dollar amount previously allocated to any project that does
9 not become a qualified low-income housing project within the
10 period required by this section or to any project with respect to
11 which an allocation is canceled by mutual consent of the California
12 Tax Credit Allocation Committee and the allocation recipient.

13 (4) *Five hundred thousand dollars (\$500,000) per calendar*
14 *year for projects housing farmworker households plus, on a*
15 *one-time basis, any unallocated credits available pursuant to*
16 *Sections 17053.14, 23608.2, and 23608.3 as those sections read*
17 *prior to January 1, 2008.*

18 (h) The term “compliance period” as defined in Section 42(i)(1)
19 of the Internal Revenue Code is modified to mean, with respect to
20 any building, the period of 30 consecutive taxable years beginning
21 with the first taxable year of the credit period with respect thereto.

22 (i) (1) Section 42(j) of the Internal Revenue Code shall not be
23 applicable and the provisions in paragraph (2) shall be substituted
24 in its place.

25 (2) The requirements of this section shall be set forth in a
26 regulatory agreement between the California Tax Credit Allocation
27 Committee and the housing sponsor, which agreement shall be
28 subordinated, when required, to any lien or encumbrance of any
29 banks or other institutional lenders to the project. The regulatory
30 agreement entered into pursuant to subdivision (f) of Section
31 50199.14 of the Health and Safety Code, shall apply, providing
32 the agreement includes all of the following provisions:

33 (A) A term not less than the compliance period.

34 (B) A requirement that the agreement be filed in the official
35 records of the county in which the qualified low-income housing
36 project is located.

37 (C) A provision stating which state and local agencies can
38 enforce the regulatory agreement in the event the housing sponsor
39 fails to satisfy any of the requirements of this section.

1 (D) A provision that the regulatory agreement shall be deemed
2 a contract enforceable by tenants as third-party beneficiaries thereto
3 and which allows individuals, whether prospective, present, or
4 former occupants of the building, who meet the income limitation
5 applicable to the building, the right to enforce the regulatory
6 agreement in any state court.

7 (E) A provision incorporating the requirements of Section 42
8 of the Internal Revenue Code as modified by this section.

9 (F) A requirement that the housing sponsor notify the California
10 Tax Credit Allocation Committee or its designee and the local
11 agency that can enforce the regulatory agreement if there is a
12 determination by the Internal Revenue Service that the project is
13 not in compliance with Section 42(g) of the Internal Revenue Code.

14 (G) A requirement that the housing sponsor, as security for the
15 performance of the housing sponsor's obligations under the
16 regulatory agreement, assign the housing sponsor's interest in rents
17 that it receives from the project, provided that until there is a
18 default under the regulatory agreement, the housing sponsor is
19 entitled to collect and retain the rents.

20 (H) The remedies available in the event of a default under the
21 regulatory agreement that is not cured within a reasonable cure
22 period, include, but are not limited to, allowing any of the parties
23 designated to enforce the regulatory agreement to collect all rents
24 with respect to the project; taking possession of the project and
25 operating the project in accordance with the regulatory agreement
26 until the enforcer determines the housing sponsor is in a position
27 to operate the project in accordance with the regulatory agreement;
28 applying to any court for specific performance; securing the
29 appointment of a receiver to operate the project; or any other relief
30 as may be appropriate.

31 (j) (1) The committee shall allocate the housing credit on a
32 regular basis consisting of two or more periods in each calendar
33 year during which applications may be filed and considered. The
34 committee shall establish application filing deadlines, the maximum
35 percentage of federal and state low-income housing tax credit
36 ceiling which may be allocated by the committee in that period,
37 and the approximate date on which allocations shall be made. If
38 the enactment of federal or state law, the adoption of rules or
39 regulations, or other similar events prevent the use of two allocation
40 periods, the committee may reduce the number of periods and

1 adjust the filing deadlines, maximum percentage of credit allocated,
2 and the allocation dates.

3 (2) The committee shall adopt a qualified allocation plan, as
4 provided in Section 42(m)(1) of the Internal Revenue Code. In
5 adopting this plan, the committee shall comply with the provisions
6 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
7 Code.

8 (3) Notwithstanding Section 42(m) of the Internal Revenue
9 Code, the California Tax Credit Allocation Committee shall
10 allocate housing credits in accordance with the qualified allocation
11 plan and regulations, which shall include the following provisions:

12 (A) All housing sponsors, as defined by paragraph (3) of
13 subdivision (a), shall demonstrate at the time the application is
14 filed with the committee that the project meets the following
15 threshold requirements:

16 (i) The housing sponsor shall demonstrate there is a need and
17 demand for low-income housing in the community or region for
18 which it is proposed.

19 (ii) The project's proposed financing, including tax credit
20 proceeds, shall be sufficient to complete the project and that the
21 proposed operating income shall be adequate to operate the project
22 for the extended use period.

23 (iii) The project shall have enforceable financing commitments,
24 either construction or permanent financing, for at least 50 percent
25 of the total estimated financing of the project.

26 (iv) The housing sponsor shall have and maintain control of the
27 site for the project.

28 (v) The housing sponsor shall demonstrate that the project
29 complies with all applicable local land use and zoning ordinances.

30 (vi) The housing sponsor shall demonstrate that the project
31 development team has the experience and the financial capacity
32 to ensure project completion and operation for the extended use
33 period.

34 (vii) The housing sponsor shall demonstrate the amount of tax
35 credit that is necessary for the financial feasibility of the project
36 and its viability as a qualified low-income housing project
37 throughout the extended use period, taking into account operating
38 expenses, a supportable debt service, reserves, funds set aside for
39 rental subsidies, and required equity, and a development fee that
40 does not exceed a specified percentage of the eligible basis of the

1 project prior to inclusion of the development fee in the eligible
2 basis, as determined by the committee.

3 (B) The committee shall give a preference to those projects
4 satisfying all of the threshold requirements of subparagraph (A)
5 if both of the following apply:

6 (i) The project serves the lowest income tenants at rents
7 affordable to those tenants.

8 (ii) The project is obligated to serve qualified tenants for the
9 longest period.

10 (C) In addition to the provisions of subparagraphs (A) and (B),
11 the committee shall use the following criteria in allocating housing
12 credits:

13 (i) Projects serving large families in which a substantial number,
14 as defined by the committee, of all residential units is comprised
15 of low-income units with three and more bedrooms.

16 (ii) Projects providing single room occupancy units serving very
17 low income tenants.

18 (iii) Existing projects that are “at risk of conversion,” as defined
19 by paragraph (3) of subdivision (c).

20 (iv) Projects for which a public agency provides direct or indirect
21 long-term financial support for at least 15 percent of the total
22 project development costs or projects for which the owner’s equity
23 constitutes at least 30 percent of the total project development
24 costs.

25 (v) Projects that provide tenant amenities not generally available
26 to residents of low-income housing projects.

27 (4) For purposes of allocating credits pursuant to this section,
28 the committee shall not give preference to any project by virtue
29 of the date of submission of its application except to break a tie
30 when two or more of the projects have an equal rating.

31 (k) Section 42(l) of the Internal Revenue Code shall be modified
32 as follows:

33 The term “secretary” shall be replaced by the term “California
34 Franchise Tax Board.”

35 (l) In the case where the state credit allowed under this section
36 exceeds the “tax,” the excess may be carried over to reduce the
37 “tax” in the following year, and succeeding years if necessary,
38 until the credit has been exhausted.

(m) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1993.

(n) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(o) This section shall remain in effect for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credits, remains in effect.

SEC. 4. Section 17053.14 of the Revenue and Taxation Code is repealed.

~~17053.14. (a) For taxable years beginning on or after January 1, 1997, there shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount, subject to Section 42(h)(1) of the Internal Revenue Code, that is otherwise equal to the lesser of 50 percent of the eligible costs, as determined under subdivision (b), or the amount allocated under paragraph (2) of subdivision (e).~~

~~(b) (1) For purposes of this section, the "eligible costs" shall be equal to the total finance costs, construction costs, excavation costs, installation costs, and permit costs paid or incurred to construct or rehabilitate farmworker housing. "Eligible costs" include, but are not limited to, improvements to ensure compliance with laws governing access for persons with disabilities and costs related to reducing utility expenses. Noneligible costs include land and those costs financed by grants and below-market financing.~~

~~(2) For purposes of paragraph (1), construction or rehabilitation of the farmworker housing shall have commenced on or after January 1, 1997.~~

~~(3) Notwithstanding any other provision of this part, eligible costs shall not include any costs paid or incurred prior to January 1, 1997.~~

~~(c) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the taxpayer first obtains a certification from the committee that the amounts described in subdivision (b) qualify for the credit under this section and the total amount of the credit allocated to the taxpayer pursuant to the Farmworker Housing Assistance Program.~~

~~(d) The taxpayer shall do all of the following:~~

~~(1) Apply to the committee for the credit certification.~~

~~(2) Retain a copy of the certification.~~

1 ~~(3) Make the certification available to the Franchise Tax Board~~
2 ~~upon request.~~

3 ~~(e) The committee shall do all of the following:~~

4 ~~(1) Provide forms and instructions for applications for credit~~
5 ~~certification, as specified pursuant to the Farmworker Housing~~
6 ~~Assistance Program.~~

7 ~~(2) Accept applications and issue a certificate to the taxpayer~~
8 ~~that includes a certification as to the eligible costs described in~~
9 ~~subdivision (b) that qualify for the credit and the total amount of~~
10 ~~the credit to which the taxpayer is entitled for the taxable year.~~
11 ~~Credit in excess of the amount necessary to make the project~~
12 ~~feasible shall not be allocated. Credits shall be allocated through~~
13 ~~a minimum of one competitive funding round per year.~~

14 ~~(3) Obtain the taxpayer's taxpayer identification number, and~~
15 ~~each partner's taxpayer identification number in the case of a~~
16 ~~partnership, for tax administration purposes.~~

17 ~~(4) Provide an annual listing to the Franchise Tax Board, in the~~
18 ~~form and manner agreed upon by the Franchise Tax Board and the~~
19 ~~committee, containing the names, taxpayer identification numbers~~
20 ~~pursuant to paragraph (3), eligible costs, and total amount of credit~~
21 ~~certified to each taxpayer.~~

22 ~~(f) For purposes of this section:~~

23 ~~(1) "Compliance period" means, with respect to any farmworker~~
24 ~~housing, the period of 30 consecutive taxable years, beginning~~
25 ~~with the taxable year in which the credit is allowable.~~

26 ~~(2) "Construct or rehabilitate" includes reconstruction, but does~~
27 ~~not include any costs related to acquisition or refinancing of~~
28 ~~property or structures thereon.~~

29 ~~(3) "Farmworker Housing Assistance Program" means Chapter~~
30 ~~3.7 (commencing with Section 50199.50) of Part 1 of Division 31~~
31 ~~of the Health and Safety Code.~~

32 ~~(4) "Qualified farmworker housing" means housing located~~
33 ~~within this state which satisfies the requirements of the Farmworker~~
34 ~~Housing Assistance Program. The housing may be vacant or~~
35 ~~occupied.~~

36 ~~(5) "Committee" means the California Tax Credit Allocation~~
37 ~~Committee as defined in Section 50199.7 of the Health and Safety~~
38 ~~Code.~~

39 ~~(6) "Qualified accountant" means an accountant licensed or~~
40 ~~certified in this state who is neither an employee of the taxpayer~~

1 nor related to the taxpayer, within the meaning of Section 267 of
2 the Internal Revenue Code.

3 ~~(g) No deduction or other credit shall be allowed under this part~~
4 ~~or Part 11 (commencing with Section 23001) to the extent of any~~
5 ~~eligible costs, as defined in subdivision (b), that are taken into~~
6 ~~account in computing the credit allowed under this section.~~

7 ~~(h) The farmworker housing tax credit shall not be allowed~~
8 ~~unless the taxpayer:~~

9 ~~(1) Constructs or rehabilitates the property subject to the~~
10 ~~covenants, conditions, and restrictions imposed by this section and~~
11 ~~pursuant to the Farmworker Housing Assistance Program, which~~
12 ~~shall include, but not necessarily be limited to, a requirement that~~
13 ~~the taxpayer obtain, for approval by the committee, a construction~~
14 ~~cost audit and certification of eligible costs from a qualified~~
15 ~~accountant.~~

16 ~~(2) Subsequent to construction or rehabilitation of the~~
17 ~~farmworker housing, owns or operates the farmworker housing~~
18 ~~pursuant to the requirements of this section, or ensures the~~
19 ~~ownership and operation of the farmworker housing pursuant to~~
20 ~~the requirements of this section.~~

21 ~~(i) The requirements of this section shall be set forth in a written~~
22 ~~agreement between the committee and the taxpayer. The agreement~~
23 ~~shall include, but not necessarily be limited to, the requirements~~
24 ~~set forth in the Farmworker Housing Assistance Program.~~

25 ~~(j) In the case where the credit allowed by this section exceeds~~
26 ~~the "net tax," the excess may be carried over to reduce the "net~~
27 ~~tax" in the following year, and succeeding years if necessary, until~~
28 ~~the credit has been exhausted.~~

29 ~~(k) (1) In the case of any disqualifying event, as defined in~~
30 ~~paragraph (2), there shall be added to the "net tax," as defined in~~
31 ~~Section 17039, for the taxable year in which the disqualifying~~
32 ~~event occurs, the recapture amount computed under paragraph (3)~~
33 ~~and the interest amount computed under paragraph (4).~~

34 ~~(2) For purposes of this subdivision, "disqualifying event" shall~~
35 ~~mean:~~

36 ~~(A) The committee determines that the certification provided~~
37 ~~under subdivision (e) was obtained by fraud or misrepresentation.~~

38 ~~(B) The taxpayer fails to comply with the requirements of the~~
39 ~~Farmworker Housing Assistance Program, or any other requirement~~
40 ~~imposed under this section.~~

1 ~~(3) For purposes of this subdivision, “recapture amount” means:~~

2 ~~(A) In the case of any disqualifying event described in~~
3 ~~subparagraph (A) of paragraph (2), the entire amount of any credit~~
4 ~~previously allowed under this section.~~

5 ~~(B) In the case of any disqualifying event described in~~
6 ~~subparagraph (B) of paragraph (2), an amount determined by~~
7 ~~multiplying the entire amount of the credit previously allowed~~
8 ~~under this section by a fraction, the numerator of which is the~~
9 ~~number of years remaining in the compliance period and the~~
10 ~~denominator of which is 30.~~

11 ~~(4) For purposes of this subdivision, “interest amount” means:~~

12 ~~(A) In the case of any disqualifying event described in~~
13 ~~subparagraph (A) of paragraph (2), the amount of interest computed~~
14 ~~using the adjusted annual rate established in Section 19521 from~~
15 ~~the due date of the return for each taxable year in which the credit~~
16 ~~was claimed to the date of the payment of the additional tax~~
17 ~~resulting from the application of this subdivision.~~

18 ~~(B) In the case of any disqualifying event described in~~
19 ~~subparagraph (B) of paragraph (2), zero.~~

20 ~~(l) The annual amount of credit granted pursuant to this section~~
21 ~~and Sections 23608.2 and 23608.3 shall not exceed five hundred~~
22 ~~thousand dollars (\$500,000), provided that the aggregate amount~~
23 ~~of the credit granted pursuant to this section and Sections 23608.2~~
24 ~~and 23608.3 for the 1998 calendar year and thereafter may exceed~~
25 ~~five hundred thousand dollars (\$500,000) per calendar year by an~~
26 ~~amount equal to any unallocated credits under this section and~~
27 ~~Sections 23608.2 and 23608.3 for the preceding calendar year or~~
28 ~~years.~~

29 ~~SEC. 4.~~

30 ~~SEC. 5.~~ Section 17058 of the Revenue and Taxation Code is
31 ~~amended to read:~~

32 17058. (a) (1) There shall be allowed as a credit against the
33 amount of net tax (as defined in Section 17039) a state low-income
34 housing credit in an amount equal to the amount determined in
35 subdivision (c), computed in accordance with the provisions of
36 Section 42 of the Internal Revenue Code, except as otherwise
37 provided in this section.

38 (2) “Taxpayer” for purposes of this section means the sole owner
39 in the case of an individual, the partners in the case of a partnership,
40 and the shareholders in the case of an “S” corporation.

1 (3) “Housing sponsor” for purposes of this section means the
2 sole owner in the case of an individual, the partnership in the case
3 of a partnership, and the “S” corporation in the case of an “S”
4 corporation.

5 (b) (1) The amount of the credit allocated to any housing
6 sponsor shall be authorized by the California Tax Credit Allocation
7 Committee, or any successor thereof, based on a project’s need
8 for the credit for economic feasibility in accordance with the
9 requirements of this section.

10 (A) The low-income housing project shall be located in
11 California and shall meet either of the following requirements:

12 (i) The project’s housing sponsor shall have been allocated by
13 the California Tax Credit Allocation Committee a credit for federal
14 income tax purposes under Section 42 of the Internal Revenue
15 Code.

16 (ii) It shall qualify for a credit under Section 42(h)(4)(B) of the
17 Internal Revenue Code.

18 (B) The California Tax Credit Allocation Committee shall not
19 require fees for the credit under this section in addition to those
20 fees required for applications for the tax credit pursuant to Section
21 42 of the Internal Revenue Code. The committee may require a
22 fee if the application for the credit under this section is submitted
23 in a calendar year after the year the application is submitted for
24 the federal tax credit.

25 (C) A partner’s distributive share of a credit allowed under this
26 section shall be determined by the partnership agreement.

27 (2) (A) The California Tax Credit Allocation Committee shall
28 certify to the housing sponsor the amount of tax credit under this
29 section allocated to the housing sponsor for each credit period.

30 (B) In the case of a partnership or an “S” corporation, the
31 housing sponsor shall provide a copy of the California Tax Credit
32 Allocation Committee certification to the taxpayer.

33 (C) The taxpayer shall, upon request, provide a copy of the
34 certification to the Franchise Tax Board.

35 (D) All elections made by the taxpayer pursuant to Section 42
36 of the Internal Revenue Code shall apply to this section.

37 (E) For buildings located in designated difficult development
38 areas or qualified census tracts as defined in Section 42(d)(5)(C)
39 of the Internal Revenue Code, credits may be allocated under this
40 section in the amounts prescribed in subdivision (c), provided that

1 the amount of credit allocated under Section 42 of the Internal
2 Revenue Code is computed on 100 percent of the qualified basis
3 of the building.

4 (c) Section 42(b) of the Internal Revenue Code shall be modified
5 as follows:

6 (1) In the case of any qualified low-income building placed in
7 service by the housing sponsor during 1987, the term “applicable
8 percentage” means 9 percent for each of the first three years and
9 3 percent for the fourth year for new buildings (whether or not the
10 building is federally subsidized) and for existing buildings.

11 (2) In the case of any qualified low-income building that receives
12 an allocation after 1989 and is a new building not federally
13 subsidized, the term “applicable percentage” means the following:

14 (A) For each of the first three years, the percentage prescribed
15 by the Secretary of the Treasury for new buildings that are not
16 federally subsidized for the taxable year, determined in accordance
17 with the requirements of Section 42(b)(2) of the Internal Revenue
18 Code, in lieu of the percentage prescribed in Section 42(b)(1)(A)
19 of the Internal Revenue Code.

20 (B) For the fourth year, the difference between 30 percent and
21 the sum of the applicable percentages for the first three years.

22 (3) In the case of any qualified low-income building that receives
23 an allocation after 1989 and that is a new building that is federally
24 subsidized or that is an existing building that is “at risk of
25 conversion,” the term “applicable percentage” means the following:

26 (A) For each of the first three years, the percentage prescribed
27 by the Secretary of the Treasury for new buildings that are federally
28 subsidized for the taxable year.

29 (B) For the fourth year, the difference between 13 percent and
30 the sum of the applicable percentages for the first three years.

31 (4) For purposes of this section, the term “at risk of conversion,”
32 with respect to an existing property means a property that satisfies
33 all of the following criteria:

34 (A) The property is a multifamily rental housing development
35 in which at least 50 percent of the units receive governmental
36 assistance pursuant to any of the following:

37 (i) New construction, substantial rehabilitation, moderate
38 rehabilitation, property disposition, and loan management set-aside
39 programs, or any other program providing project-based assistance

1 pursuant to Section 8 of the United States Housing Act of 1937,
2 Section 1437f of Title 42 of the United States Code, as amended.

3 (ii) The Below-Market-Interest-Rate Program pursuant to
4 Section 221(d)(3) of the National Housing Act, Sections
5 1715l(d)(3) and (5) of Title 12 of the United States Code.

6 (iii) Section 236 of the National Housing Act, Section 1715z-1
7 of Title 12 of the United States Code.

8 (iv) Programs for rent supplement assistance pursuant to Section
9 101 of the Housing and Urban Development Act of 1965, Section
10 1701s of Title 12 of the United States Code, as amended.

11 (v) Programs pursuant to Section 515 of the Housing Act of
12 1949, Section 1485 of Title 42 of the United States Code, as
13 amended.

14 (vi) The low-income housing credit program set forth in Section
15 42 of the Internal Revenue Code.

16 (B) The restrictions on rent and income levels will terminate or
17 the federal insured mortgage on the property is eligible for
18 prepayment anytime within five years before or after the date of
19 application to the California Tax Credit Allocation Committee.

20 (C) The entity acquiring the property enters into a regulatory
21 agreement that requires the property to be operated in accordance
22 with the requirements of this section for a period equal to the
23 greater of 55 years or the life of the property.

24 (D) The property satisfies the requirements of Section 42(e) of
25 the Internal Revenue Code regarding rehabilitation expenditures,
26 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
27 apply.

28 (d) The term “qualified low-income housing project” as defined
29 in Section 42(c)(2) of the Internal Revenue Code is modified by
30 adding the following requirements:

31 (1) The taxpayer shall be entitled to receive a cash distribution
32 from the operations of the project, after funding required reserves,
33 that, at the election of the taxpayer, is equal to:

34 (A) An amount not to exceed 8 percent of the lesser of:

35 (i) The owner equity that shall include the amount of the capital
36 contributions actually paid to the housing sponsor and shall not
37 include any amounts until they are paid on an investor note.

38 (ii) Twenty percent of the adjusted basis of the building as of
39 the close of the first taxable year of the credit period.

1 (B) The amount of the cashflow from those units in the building
2 that are not low-income units. For purposes of computing cashflow
3 under this subparagraph, operating costs shall be allocated to the
4 low-income units using the “floor space fraction,” as defined in
5 Section 42 of the Internal Revenue Code.

6 (C) Any amount allowed to be distributed under subparagraph
7 (A) that is not available for distribution during the first five years
8 of the compliance period may be accumulated and distributed any
9 time during the first 15 years of the compliance period but not
10 thereafter.

11 (2) The limitation on return shall apply in the aggregate to the
12 partners if the housing sponsor is a partnership and in the aggregate
13 to the shareholders if the housing sponsor is an “S” corporation.

14 (3) The housing sponsor shall apply any cash available for
15 distribution in excess of the amount eligible to be distributed under
16 paragraph (1) to reduce the rent on rent-restricted units or to
17 increase the number of rent-restricted units subject to the tests of
18 Section 42(g)(1) of the Internal Revenue Code.

19 (e) The provisions of Section 42(f) of the Internal Revenue Code
20 shall be modified as follows:

21 (1) The term “credit period” as defined in Section 42(f)(1) of
22 the Internal Revenue Code is modified by substituting “four taxable
23 years” for “10 taxable years.”

24 (2) The special rule for the first taxable year of the credit period
25 under Section 42(f)(2) of the Internal Revenue Code shall not apply
26 to the tax credit under this section.

27 (3) Section 42(f)(3) of the Internal Revenue Code is modified
28 to read:

29 If, as of the close of any taxable year in the compliance period,
30 after the first year of the credit period, the qualified basis of any
31 building exceeds the qualified basis of that building as of the close
32 of the first year of the credit period, the housing sponsor, to the
33 extent of its tax credit allocation, shall be eligible for a credit on
34 the excess in an amount equal to the applicable percentage
35 determined pursuant to subdivision (c) for the four-year period
36 beginning with the taxable year in which the increase in qualified
37 basis occurs.

38 (f) The provisions of Section 42(h) of the Internal Revenue
39 Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable to this section.

(g) The aggregate housing credit dollar amount which may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 12206, and Section 23610.5 shall be an amount equal to the sum of all the following:

(1) Seventy million dollars (\$70,000,000) for the 2001 calendar year, and, for the 2002 calendar year and each calendar year thereafter, seventy million dollars (\$70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year. For the purposes of this paragraph, the term “Consumer Price Index” means the last Consumer Price Index for all urban consumers published by the federal Department of Labor.

(2) The unused housing credit ceiling, if any, for the preceding calendar years.

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(4) Five hundred thousand dollars (\$500,000) per calendar year for projects housing farmworker households plus, on a one-time basis, any unallocated credits available pursuant to Sections 17053.14, 23608.2, and 23608.3 as those sections read prior to January 1, 2008.

(h) The term “compliance period” as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to

1 any building, the period of 30 consecutive taxable years beginning
2 with the first taxable year of the credit period with respect thereto.

3 (i) Section 42(j) of the Internal Revenue Code shall not be
4 applicable and the following requirements of this section shall be
5 set forth in a regulatory agreement between the California Tax
6 Credit Allocation Committee and the housing sponsor, which
7 agreement shall be subordinated, when required, to any lien or
8 encumbrance of any banks or other institutional lenders to the
9 project. The regulatory agreement entered into pursuant to
10 subdivision (f) of Section 50199.14 of the Health and Safety Code
11 shall apply, providing the agreement includes all of the following
12 provisions:

13 (1) A term not less than the compliance period.

14 (2) A requirement that the agreement be filed in the official
15 records of the county in which the qualified low-income housing
16 project is located.

17 (3) A provision stating which state and local agencies can
18 enforce the regulatory agreement in the event the housing sponsor
19 fails to satisfy any of the requirements of this section.

20 (4) A provision that the regulatory agreement shall be deemed
21 a contract enforceable by tenants as third-party beneficiaries thereto
22 and which allows individuals, whether prospective, present, or
23 former occupants of the building, who meet the income limitation
24 applicable to the building, the right to enforce the regulatory
25 agreement in any state court.

26 (5) A provision incorporating the requirements of Section 42
27 of the Internal Revenue Code as modified by this section.

28 (6) A requirement that the housing sponsor notify the California
29 Tax Credit Allocation Committee or its designee if there is a
30 determination by the Internal Revenue Service that the project is
31 not in compliance with Section 42(g) of the Internal Revenue Code.

32 (7) A requirement that the housing sponsor, as security for the
33 performance of the housing sponsor's obligations under the
34 regulatory agreement, assign the housing sponsor's interest in rents
35 that it receives from the project, provided that until there is a
36 default under the regulatory agreement, the housing sponsor is
37 entitled to collect and retain the rents.

38 (8) The remedies available in the event of a default under the
39 regulatory agreement that is not cured within a reasonable cure
40 period, include, but are not limited to, allowing any of the parties

1 designated to enforce the regulatory agreement to collect all rents
2 with respect to the project; taking possession of the project and
3 operating the project in accordance with the regulatory agreement
4 until the enforcer determines the housing sponsor is in a position
5 to operate the project in accordance with the regulatory agreement;
6 applying to any court for specific performance; securing the
7 appointment of a receiver to operate the project; or any other relief
8 as may be appropriate.

9 (j) (1) The committee shall allocate the housing credit on a
10 regular basis consisting of two or more periods in each calendar
11 year during which applications may be filed and considered. The
12 committee shall establish application filing deadlines, the maximum
13 percentage of federal and state low-income housing tax credit
14 ceiling that may be allocated by the committee in that period, and
15 the approximate date on which allocations shall be made. If the
16 enactment of federal or state law, the adoption of rules or
17 regulations or other similar events prevent the use of two allocation
18 periods, the committee may reduce the number of periods and
19 adjust the filing deadlines, maximum percentage of credit allocated,
20 and the allocation dates.

21 (2) The committee shall adopt a qualified allocation plan, as
22 provided in Section 42(m)(1) of the Internal Revenue Code. In
23 adopting this plan, the committee shall comply with the provisions
24 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
25 Code.

26 (3) Notwithstanding Section 42(m) of the Internal Revenue
27 Code, the California Tax Credit Allocation Committee shall
28 allocate housing credits in accordance with the qualified allocation
29 plan and regulations, which shall include the following provisions:

30 (A) All housing sponsors, as defined by paragraph (3) of
31 subdivision (a), shall demonstrate at the time the application is
32 filed with the committee that the project meets the following
33 threshold requirements:

34 (i) The housing sponsor shall demonstrate there is a need and
35 demand for low-income housing in the community or region for
36 which it is proposed.

37 (ii) The project's proposed financing, including tax credit
38 proceeds, shall be sufficient to complete the project and that the
39 proposed operating income shall be adequate to operate the project
40 for the extended use period.

1 (iii) The project shall have enforceable financing commitments,
2 either construction or permanent financing, for at least 50 percent
3 of the total estimated financing of the project.

4 (iv) The housing sponsor shall have and maintain control of the
5 site for the project.

6 (v) The housing sponsor shall demonstrate that the project
7 complies with all applicable local land use and zoning ordinances.

8 (vi) The housing sponsor shall demonstrate that the project
9 development team has the experience and the financial capacity
10 to ensure project completion and operation for the extended use
11 period.

12 (vii) The housing sponsor shall demonstrate the amount of tax
13 credit that is necessary for the financial feasibility of the project
14 and its viability as a qualified low-income housing project
15 throughout the extended use period, taking into account operating
16 expenses, a supportable debt service, reserves, funds set aside for
17 rental subsidies, and required equity, and a development fee that
18 does not exceed a specified percentage of the eligible basis of the
19 project prior to inclusion of the development fee in the eligible
20 basis, as determined by the committee.

21 (B) The committee shall give a preference to those projects
22 satisfying all of the threshold requirements of subparagraph (A)
23 if both of the following apply:

24 (i) The project serves the lowest income tenants at rents
25 affordable to those tenants.

26 (ii) The project is obligated to serve qualified tenants for the
27 longest period.

28 (C) In addition to the provisions of subparagraphs (A) and (B),
29 the committee shall use the following criteria in allocating housing
30 credits:

31 (i) Projects serving large families in which a substantial number,
32 as defined by the committee of all residential units is comprised
33 of low-income units with three and more bedrooms.

34 (ii) Projects providing single room occupancy units serving very
35 low income tenants.

36 (iii) Existing projects that are “at risk of conversion,” as defined
37 by paragraph (4) of subdivision (c).

38 (iv) Projects for which a public agency provides direct or indirect
39 long-term financial support for at least 15 percent of the total
40 project development costs or projects for which the owner’s equity

1 constitutes at least 30 percent of the total project development
2 costs.

3 (v) Projects that provide tenant amenities not generally available
4 to residents of low-income housing projects.

5 (4) For purposes of allocating credits pursuant to this section,
6 the committee shall not give preference to any project by virtue
7 of the date of submission of its application.

8 (k) Section 42(l) of the Internal Revenue Code shall be modified
9 as follows:

10 The term “secretary” shall be replaced by the term “California
11 Franchise Tax Board.”

12 (l) In the case where the credit allowed under this section
13 exceeds the net tax, the excess credit may be carried over to reduce
14 the net tax in the following year, and succeeding taxable years, if
15 necessary, until the credit has been exhausted.

16 (m) A project that received an allocation of a 1989 federal
17 housing credit dollar amount shall be eligible to receive an
18 allocation of a 1990 state housing credit dollar amount, subject to
19 all of the following conditions:

20 (1) The project was not placed in service prior to 1990.

21 (2) To the extent the amendments made to this section by the
22 Statutes of 1990 conflict with any provisions existing in this section
23 prior to those amendments, the prior provisions of law shall prevail.

24 (3) Notwithstanding paragraph (2), a project applying for an
25 allocation under this subdivision shall be subject to the
26 requirements of paragraph (3) of subdivision (j).

27 (n) The credit period with respect to an allocation of credit in
28 1989 by the California Tax Credit Allocation Committee of which
29 any amount is attributable to unallocated credit from 1987 or 1988
30 shall not begin until after December 31, 1989.

31 (o) The provisions of Section 11407(a) of Public Law 101-508,
32 relating to the effective date of the extension of the low-income
33 housing credit, shall apply to calendar years after 1989.

34 (p) The provisions of Section 11407(c) of Public Law 101-508,
35 relating to election to accelerate credit, shall not apply.

36 (q) Any unused credit may continue to be carried forward, as
37 provided in subdivision (l), until the credit has been exhausted.

38 This section shall remain in effect on and after December 1,
39 1990, for as long as Section 42 of the Internal Revenue Code,
40 relating to low-income housing credits, remains in effect.

(r) The amendments to this section by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 1994.

SEC. 6. Section 23608.2 of the Revenue and Taxation Code is repealed.

~~23608.2.—(a) For taxable years beginning on or after January 1, 1997, there shall be allowed as a credit against the “tax,” as defined by Section 23036, an amount, subject to Section 42(h)(1) of the Internal Revenue Code, that is otherwise equal to the lesser of 50 percent of the eligible costs, as determined under subdivision (b), or the amount allocated under paragraph (2) of subdivision (e).~~

~~(b) (1) For purposes of this section, the “eligible costs” shall be equal to the total finance costs, construction costs, excavation costs, installation costs, and permit costs paid or incurred to construct or rehabilitate farmworker housing. “Eligible costs” include, but are not limited to, improvements to ensure compliance with laws governing access for persons with disabilities and costs related to reducing utility expenses. Noneligible costs include land and those costs financed by grants and below-market financing.~~

~~(2) For purposes of paragraph (1), construction or rehabilitation of the farmworker housing shall have commenced on or after January 1, 1997.~~

~~(3) Notwithstanding any provision of this part, eligible costs shall not include any costs paid or incurred prior to January 1, 1997.~~

~~(e) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the taxpayer first obtains a certification from the committee that the amounts described in subdivision (b) qualify for the credit under this section and the total amount of the credit allocated to the taxpayer pursuant to the Farmworker Housing Assistance Program.~~

~~(d) The taxpayer shall do all of the following:~~

~~(1) Apply to the committee for credit certification.~~

~~(2) Retain a copy of the certification.~~

~~(3) Make the certification available to the Franchise Tax Board upon request.~~

~~(e) The committee shall do all of the following:~~

1 ~~(1) Provide forms and instructions for applications for credit~~
2 ~~certification, as specified pursuant to the Farmworker Housing~~
3 ~~Assistance Program.~~

4 ~~(2) Accept applications and issue a certificate to the taxpayer~~
5 ~~that includes a certification as to the eligible costs described in~~
6 ~~subdivision (b) that qualify for the credit and the total amount of~~
7 ~~the credit to which the taxpayer is entitled for the taxable year.~~
8 ~~Credit in excess of the amount necessary to make the project~~
9 ~~feasible shall not be allocated. Credits shall be allocated through~~
10 ~~a minimum of one competitive funding round per year.~~

11 ~~(3) Obtain the taxpayer's taxpayer identification number, or~~
12 ~~each shareholder's taxpayer identification number in the case of~~
13 ~~an S corporation, for tax administration purposes.~~

14 ~~(4) Provide an annual listing to the Franchise Tax Board, in the~~
15 ~~form and manner agreed upon by the Franchise Tax Board and the~~
16 ~~committee, containing the names, taxpayer identification numbers~~
17 ~~pursuant to paragraph (3), eligible costs, and total amount of credit~~
18 ~~certified to each taxpayer.~~

19 ~~(f) For purposes of this section:~~

20 ~~(1) "Compliance period" means, with respect to any farmworker~~
21 ~~housing, the period of 30 consecutive taxable years, beginning~~
22 ~~with the taxable year in which the credit is allowable.~~

23 ~~(2) "Construct or rehabilitate" includes reconstruction, but does~~
24 ~~not include any costs related to acquisition or refinancing of~~
25 ~~property or structures thereon.~~

26 ~~(3) "Farmworker Housing Assistance Program" means Chapter~~
27 ~~3.7 (commencing with Section 50199.50) of Part 1 of Division 31~~
28 ~~of the Health and Safety Code.~~

29 ~~(4) "Qualified farmworker housing" means housing located~~
30 ~~within this state which satisfies the requirements of the Farmworker~~
31 ~~Housing Assistance Program. The housing may be vacant or~~
32 ~~occupied, and it need not be licensed pursuant to the Employee~~
33 ~~Housing Act at the time of the initiation of construction or~~
34 ~~rehabilitation.~~

35 ~~(5) "Committee" means the California Tax Credit Allocation~~
36 ~~Committee as defined in Section 50199.7 of the Health and Safety~~
37 ~~Code.~~

38 ~~(6) "Qualified accountant" means an accountant licensed or~~
39 ~~certified in this state who is neither an employee of the taxpayer,~~

1 nor related to the taxpayer within the meaning of Section 267 of
2 the Internal Revenue Code.

3 (g) No deduction or other credit shall be allowed under this part
4 or Part 10 (commencing with Section 17001) to the extent of any
5 eligible costs, as defined in subdivision (b), that are taken into
6 account in computing the credit allowed under this section.

7 (h) The farmworker housing tax credit shall not be allowed
8 unless the taxpayer:

9 (1) Constructs or rehabilitates the property subject to the
10 covenants, conditions, and restrictions imposed by this section and
11 pursuant to the Farmworker Housing Assistance Program, which
12 shall include, but not necessarily be limited to, a requirement that
13 the taxpayer obtain, for approval by the committee, a construction
14 cost audit and certification of eligible costs from a qualified
15 accountant.

16 (2) Subsequent to construction or rehabilitation of the
17 farmworker housing, owns or operates the farmworker housing
18 pursuant to the requirements of this section, or ensures the
19 ownership and operation of the farmworker housing pursuant to
20 the requirements of this section.

21 (i) The requirements of this section shall be set forth in a written
22 agreement between the committee and the taxpayer. The agreement
23 shall include, but not necessarily be limited to, the requirements
24 set forth in the Farmworker Housing Assistance Program.

25 (j) In the case where the credit allowed by this section exceeds
26 the "tax," the excess may be carried over to reduce the "tax" in
27 the following year, and succeeding years if necessary, until the
28 credit has been exhausted.

29 (k) (1) In the case of any disqualifying event, as defined in
30 paragraph (2), there shall be added to the "tax," as defined in
31 Section 23036, for the taxable year in which the disqualifying
32 event occurs, the recapture amount computed under paragraph (3)
33 and the interest amount computed under paragraph (4).

34 (2) For purposes of this subdivision, "disqualifying event" shall
35 mean:

36 (A) The committee determines that the certification provided
37 under subdivision (e) was obtained by fraud or misrepresentation.

38 (B) The taxpayer fails to comply with the requirements of the
39 Farmworker Housing Assistance Program, or any other requirement
40 imposed under this section.

1 ~~(3) For purposes of this subdivision, “recapture amount” means:~~

2 ~~(A) In the case of any disqualifying event described in~~
3 ~~subparagraph (A) of paragraph (2), the entire amount of any credit~~
4 ~~previously allowed under this section.~~

5 ~~(B) In the case of any disqualifying event described in~~
6 ~~subparagraph (B) of paragraph (2), an amount determined by~~
7 ~~multiplying the entire amount of the credit previously allowed~~
8 ~~under this section by a fraction, the numerator of which is the~~
9 ~~number of years remaining in the compliance period and the~~
10 ~~denominator of which is 30.~~

11 ~~(4) For purposes of this subdivision, “interest amount” means:~~

12 ~~(A) In the case of any disqualifying event described in~~
13 ~~subparagraph (A) of paragraph (2), the amount of interest computed~~
14 ~~using the adjusted annual rate established in Section 19521 from~~
15 ~~the due date of the return for each taxable year in which the credit~~
16 ~~was claimed to the date of payment of the additional tax resulting~~
17 ~~from the application of this subdivision.~~

18 ~~(B) In the case of any disqualifying event described in~~
19 ~~subparagraph (B) of paragraph (2), zero.~~

20 ~~(l) The annual amount of credit granted pursuant to this section~~
21 ~~and Sections 17053.14 and 23608.3 shall not exceed five hundred~~
22 ~~thousand dollars (\$500,000), provided that the aggregate amount~~
23 ~~of the credit granted pursuant to this section and Sections 17053.14~~
24 ~~and 23608.3 for the calendar year 1998 and thereafter may exceed~~
25 ~~five hundred thousand dollars (\$500,000) per calendar year by an~~
26 ~~amount equal to any unallocated credits under this section and~~
27 ~~Sections 17053.14 and 23608.3 for the preceding calendar year or~~
28 ~~years.~~

29 ~~SEC. 7. Section 23608.3 of the Revenue and Taxation Code is~~
30 ~~repealed.~~

31 ~~23608.3.—(a) For taxable years beginning on or after January~~
32 ~~1, 1997, there shall be allowed as a credit against the “tax,” as~~
33 ~~defined in Section 23036, for a bank or financial corporation as~~
34 ~~determined in subdivision (b).~~

35 ~~(b) (1) For purposes of this section, the credit shall be equal to~~
36 ~~50 percent of the difference between the amount of interest income~~
37 ~~which could have been collected by the bank or financial~~
38 ~~corporation had the loan rate been one point above prime, or any~~
39 ~~other index used by the lender, and the lesser amount of interest~~
40 ~~income actually due for the term of the loan by the bank or~~

1 ~~financial corporation on those portions of loans used to finance~~
2 ~~only eligible costs actually paid or incurred to rehabilitate or~~
3 ~~construct qualified farmworker housing.~~

4 ~~(2) The credit allowed under this section shall be taken in equal~~
5 ~~installments over a period equal to the lesser of 10 years or the~~
6 ~~term of the loan beginning in the taxpayer's taxable year during~~
7 ~~which the qualified farmworker housing is completed and there is~~
8 ~~initial occupancy by eligible farmworkers. In the case where the~~
9 ~~credit allowed by this section exceeds the "tax" for any taxable~~
10 ~~year, the excess may not be carried over to reduce the "tax" in any~~
11 ~~succeeding year.~~

12 ~~(3) The credit shall not apply to loans with a term of less than~~
13 ~~three years or to loans funded prior to January 1, 1997. The credit~~
14 ~~shall apply only to interest income from the loan and shall not~~
15 ~~apply to any other loan fees or other charges collected by the bank~~
16 ~~or financial corporation with respect to the loan.~~

17 ~~(e) The taxpayer shall qualify for the credit by application to~~
18 ~~and certification by the committee that the expenses qualify for~~
19 ~~the credit under this section.~~

20 ~~(d) The taxpayer shall do all of the following:~~

21 ~~(1) Apply to the committee for credit certification prior to the~~
22 ~~funding of the loan.~~

23 ~~(2) Retain a copy of the certification.~~

24 ~~(3) Make the certification available to the Franchise Tax Board~~
25 ~~upon request.~~

26 ~~(e) The committee shall do all of the following:~~

27 ~~(1) Provide forms and instructions for applications for credit~~
28 ~~certification, as specified pursuant to the Farmworker Housing~~
29 ~~Assistance Program.~~

30 ~~(2) Accept applications and issue a certificate to the taxpayer~~
31 ~~that includes the credit amount to which the taxpayer is entitled~~
32 ~~for the taxable year.~~

33 ~~(3) Obtain the taxpayer's taxpayer identification number, and~~
34 ~~each shareholder's taxpayer identification number in the case of~~
35 ~~an S corporation, for tax administration purposes.~~

36 ~~(4) Provide an annual listing to the Franchise Tax Board, and~~
37 ~~in a form and manner agreed upon by the Franchise Tax Board~~
38 ~~and the committee, containing the names, taxpayer identification~~
39 ~~numbers pursuant to paragraph (3), qualified amounts, and total~~
40 ~~amount of credit certified to each taxpayer.~~

(f) For the purposes of this section:

(1) “Construct or rehabilitate” includes reconstruction, but does not include any costs related to acquisition or refinancing of property or structures thereon.

(2) “Farmworker Housing Assistance Program” means Chapter 3.7 (commencing with Section 50199.50) of Part 1 of Division 31 of the Health and Safety Code.

(3) “Eligible costs” means those expenditures certified by the committee to meet the requirements of Sections 17053.14 and 23608.2.

(4) “Qualified farmworker housing” means housing within the state that meets the requirements of the Farmworker Housing Assistance Program.

(g) (1) In the event that the committee determines that the certification provided under subdivision (e) was obtained by fraud or misrepresentation of the taxpayer, there shall be added to the “tax,” as defined in Section 23036 for the taxable year in which the disqualifying event occurs, the recapture amount computed under paragraph (2) and the interest amount computed under paragraph (3):

(2) For purposes of this subdivision, “recapture amount” means the entire amount of any credit previously allowed under this section.

(3) For purposes of this subdivision, “interest amount” means the amount of interest computed using the adjusted annual rate established in Section 19521 from the due date of the return for the taxable year in which the credit was claimed to the date of payment of the additional tax resulting from the application of this subdivision.

(h) (1) Except as provided in paragraph (2), if the bank or financial corporation sells the loan to another bank or financial corporation, the balance of the credit, if any, shall be transferred to the assignee or transferee of the loan, subject to the same conditions and limitations as set forth in this section.

(2) A bank or financial corporation may assign, sell, or otherwise transfer the loan to another person or entity and retain the right to claim the credit granted under this section if the bank or financial corporation also retains responsibility for servicing the loan.

(i) The annual amount of credit granted pursuant to this section and Sections 17053.14 and 23608.2 shall not exceed five hundred

1 thousand dollars (\$500,000), provided that the aggregate amount
2 of the credit granted pursuant to this section and Sections 17053.14
3 and 23608.2 for the 1998 calendar year and thereafter may exceed
4 five hundred thousand dollars (\$500,000) per calendar year by an
5 amount equal to any unallocated credits under this section and
6 Sections 17053.14 and 23608.2 for the preceding calendar year or
7 years.

8 ~~SEC. 5.~~ Section 23608.2 of the Revenue and Taxation Code
9 is amended to read:

10 23608.2. (a) For taxable years beginning on or after January
11 1, 1997, there shall be allowed as a credit against the “tax,” as
12 defined by Section 23036, an amount, subject to Section 42(h)(1)
13 of the Internal Revenue Code that is allocated to the taxpayer by
14 the California Tax Credit Allocation Committee under subdivision
15 (e) of Section 50199.20 of the Health and Safety Code.

16 (b) “Agricultural worker” or farmworker” shall have the same
17 meaning as specified in subdivision (b) of Section 1140.4 of the
18 Labor Code.

19 (c) The annual amount of credit granted pursuant to this section
20 and Sections 17053.14 and 23608.3 shall not exceed five hundred
21 thousand dollars (\$500,000), provided that the aggregate amount
22 of the credit granted pursuant to this section and Sections 17053.14
23 and 23608.3 for the calendar year 1998 and thereafter may exceed
24 five hundred thousand dollars (\$500,000) per calendar year by an
25 amount equal to any unallocated credits under this section and
26 Sections 17053.14 and 23608.3 for the preceding calendar year or
27 years.

28 ~~SEC. 6.~~

29 ~~SEC. 8.~~ Section 23610.5 of the Revenue and Taxation Code is
30 amended to read:

31 23610.5. (a) (1) There shall be allowed as a credit against the
32 “tax” (as defined by Section 23036) a state low-income housing
33 tax credit in an amount equal to the amount determined in
34 subdivision (c), computed in accordance with Section 42 of the
35 Internal Revenue Code of 1986, except as otherwise provided in
36 this section.

37 (2) “Taxpayer,” for purposes of this section, means the sole
38 owner in the case of a “C” corporation, the partners in the case of
39 a partnership, and the shareholders in the case of an “S”
40 corporation.

1 (3) “Housing sponsor,” for purposes of this section, means the
2 sole owner in the case of a “C” corporation, the partnership in the
3 case of a partnership, and the “S” corporation in the case of an “S”
4 corporation.

5 (b) (1) The amount of the credit allocated to any housing
6 sponsor shall be authorized by the California Tax Credit Allocation
7 Committee, or any successor thereof, based on a project’s need
8 for the credit for economic feasibility in accordance with the
9 requirements of this section.

10 (A) The low-income housing project shall be located in
11 California and shall meet either of the following requirements:

12 (i) The project’s housing sponsor has been allocated by the
13 California Tax Credit Allocation Committee a credit for federal
14 income tax purposes under Section 42 of the Internal Revenue
15 Code.

16 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
17 Internal Revenue Code.

18 (B) The California Tax Credit Allocation Committee shall not
19 require fees for the credit under this section in addition to those
20 fees required for applications for the tax credit pursuant to Section
21 42 of the Internal Revenue Code. The committee may require a
22 fee if the application for the credit under this section is submitted
23 in a calendar year after the year the application is submitted for
24 the federal tax credit.

25 (C) A partner’s distributive share of a credit allowed under this
26 section shall be determined by the partnership agreement.

27 (2) (A) The California Tax Credit Allocation Committee shall
28 certify to the housing sponsor the amount of tax credit under this
29 section allocated to the housing sponsor for each credit period.

30 (B) In the case of a partnership or an “S” corporation, the
31 housing sponsor shall provide a copy of the California Tax Credit
32 Allocation Committee certification to the taxpayer.

33 (C) The taxpayer shall, upon request, provide a copy of the
34 certification to the Franchise Tax Board.

35 (D) All elections made by the taxpayer pursuant to Section 42
36 of the Internal Revenue Code shall apply to this section.

37 (E) For buildings located in designated difficult development
38 areas or qualified census tracts as defined in Section 42(d)(5)(C)
39 of the Internal Revenue Code, credits may be allocated under this
40 section in the amounts prescribed in subdivision (c), provided that

1 the amount of credit allocated under Section 42 of the Internal
2 Revenue Code is computed on 100 percent of the qualified basis
3 of the building.

4 (c) Section 42(b) of the Internal Revenue Code shall be modified
5 as follows:

6 (1) In the case of any qualified low-income building placed in
7 service by the housing sponsor during 1987, the term “applicable
8 percentage” means 9 percent for each of the first three years and
9 3 percent for the fourth year for new buildings (whether or not the
10 building is federally subsidized) and for existing buildings.

11 (2) In the case of any qualified low-income building that receives
12 an allocation after 1989 and is a new building not federally
13 subsidized, the term “applicable percentage” means the following:

14 (A) For each of the first three years, the percentage prescribed
15 by the Secretary of the Treasury for new buildings that are not
16 federally subsidized for the taxable year, determined in accordance
17 with the requirements of Section 42(b)(2) of the Internal Revenue
18 Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

19 (B) For the fourth year, the difference between 30 percent and
20 the sum of the applicable percentages for the first three years.

21 (3) In the case of any qualified low-income building that receives
22 an allocation after 1989 and that is a new building that is federally
23 subsidized or that is an existing building that is “at risk of
24 conversion,” the term “applicable percentage” means the following:

25 (A) For each of the first three years, the percentage prescribed
26 by the Secretary of the Treasury for new buildings that are federally
27 subsidized for the taxable year.

28 (B) For the fourth year, the difference between 13 percent and
29 the sum of the applicable percentages for the first three years.

30 (4) For purposes of this section, the term “at risk of conversion,”
31 with respect to an existing property means a property that satisfies
32 all of the following criteria:

33 (A) The property is a multifamily rental housing development
34 in which at least 50 percent of the units receive governmental
35 assistance pursuant to any of the following:

36 (i) New construction, substantial rehabilitation, moderate
37 rehabilitation, property disposition, and loan management set-aside
38 programs, or any other program providing project-based assistance
39 pursuant to Section 8 of the United States Housing Act of 1937,
40 Section 1437f of Title 42 of the United States Code, as amended.

1 (ii) The Below-Market-Interest-Rate Program pursuant to
2 Section 221(d)(3) of the National Housing Act, Sections
3 1715l(d)(3) and (5) of Title 12 of the United States Code.

4 (iii) Section 236 of the National Housing Act, Section 1715z-1
5 of Title 12 of the United States Code.

6 (iv) Programs for rent supplement assistance pursuant to Section
7 101 of the Housing and Urban Development Act of 1965, Section
8 1701s of Title 12 of the United States Code, as amended.

9 (v) Programs pursuant to Section 515 of the Housing Act of
10 1949, Section 1485 of Title 42 of the United States Code, as
11 amended.

12 (vi) The low-income housing credit program set forth in Section
13 42 of the Internal Revenue Code.

14 (B) The restrictions on rent and income levels will terminate or
15 the federally insured mortgage on the property is eligible for
16 prepayment anytime within five years before or after the date of
17 application to the California Tax Credit Allocation Committee.

18 (C) The entity acquiring the property enters into a regulatory
19 agreement that requires the property to be operated in accordance
20 with the requirements of this section for a period equal to the
21 greater of 55 years or the life of the property.

22 (D) The property satisfies the requirements of Section 42(e) of
23 the Internal Revenue Code regarding rehabilitation expenditures,
24 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
25 apply.

26 (d) The term “qualified low-income housing project” as defined
27 in Section 42(c)(2) of the Internal Revenue Code is modified by
28 adding the following requirements:

29 (1) The taxpayer shall be entitled to receive a cash distribution
30 from the operations of the project, after funding required reserves,
31 which, at the election of the taxpayer, shall be equal to:

32 (A) An amount not to exceed 8 percent of the lesser of:

33 (i) The owner equity, which shall include the amount of the
34 capital contributions actually paid to the housing sponsor and shall
35 not include any amounts until they are paid on an investor note.

36 (ii) Twenty percent of the adjusted basis of the building as of
37 the close of the first taxable year of the credit period.

38 (B) The amount of the cashflow from those units in the building
39 that are not low-income units. For purposes of computing cashflow
40 under this subparagraph, operating costs shall be allocated to the

1 low-income units using the “floor space fraction,” as defined in
2 Section 42 of the Internal Revenue Code.

3 (C) Any amount allowed to be distributed under subparagraph
4 (A) that is not available for distribution during the first five years
5 of the compliance period may accumulate and be distributed at
6 any time during the first 15 years of the compliance period but not
7 thereafter.

8 (2) The limitation on return shall apply in the aggregate to the
9 partners if the housing sponsor is a partnership and in the aggregate
10 to the shareholders if the housing sponsor is an “S” corporation.

11 (3) The housing sponsor shall apply any cash available for
12 distribution in excess of the amount eligible to be distributed under
13 paragraph (1) to reduce the rent on rent-restricted units or to
14 increase the number of rent-restricted units subject to the tests of
15 Section 42(g)(1) of the Internal Revenue Code.

16 (e) The provisions of Section 42(f) of the Internal Revenue Code
17 shall be modified as follows:

18 (1) The term “credit period” as defined in Section 42(f)(1) of
19 the Internal Revenue Code is modified by substituting “four taxable
20 years” for “10 taxable years.”

21 (2) The special rule for the first taxable year of the credit period
22 under Section 42(f)(2) of the Internal Revenue Code shall not apply
23 to the tax credit under this section.

24 (3) Section 42(f)(3) of the Internal Revenue Code is modified
25 to read:

26 If, as of the close of any taxable year in the compliance period,
27 after the first year of the credit period, the qualified basis of any
28 building exceeds the qualified basis of that building as of the close
29 of the first year of the credit period, the housing sponsor, to the
30 extent of its tax credit allocation, shall be eligible for a credit on
31 the excess in an amount equal to the applicable percentage
32 determined pursuant to subdivision (c) for the four-year period
33 beginning with the later of the taxable years in which the increase
34 in qualified basis occurs.

35 (f) The provisions of Section 42(h) of the Internal Revenue
36 Code shall be modified as follows:

37 (1) Section 42(h)(2) of the Internal Revenue Code shall not be
38 applicable and instead the following provisions shall be applicable:

39 The total amount for the four-year credit period of the housing
40 credit dollars allocated in a calendar year to any building shall

1 reduce the aggregate housing credit dollar amount of the California
2 Tax Credit Allocation Committee for the calendar year in which
3 the allocation is made.

4 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
5 (7), and (8) of Section 42(h) of the Internal Revenue Code shall
6 not be applicable.

7 (g) The aggregate housing credit dollar amount that may be
8 allocated annually by the California Tax Credit Allocation
9 Committee pursuant to this section, Section 12206, and Section
10 17058 shall be an amount equal to the sum of all the following:

11 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
12 year, and, for the 2002 calendar year and each calendar year
13 thereafter, seventy million dollars (\$70,000,000) increased by the
14 percentage, if any, by which the Consumer Price Index for the
15 preceding calendar year exceeds the Consumer Price Index for the
16 2001 calendar year. For the purposes of this paragraph, the term
17 “Consumer Price Index” means the last Consumer Price Index for
18 all urban consumers published by the federal Department of Labor.

19 (2) The unused housing credit ceiling, if any, for the preceding
20 calendar years.

21 (3) The amount of housing credit ceiling returned in the calendar
22 year. For purposes of this paragraph, the amount of housing credit
23 dollar amount returned in the calendar year equals the housing
24 credit dollar amount previously allocated to any project that does
25 not become a qualified low-income housing project within the
26 period required by this section or to any project with respect to
27 which an allocation is canceled by mutual consent of the California
28 Tax Credit Allocation Committee and the allocation recipient.

29 (4) *Five hundred thousand dollars (\$500,000) per calendar*
30 *year for projects housing farmworker households plus, on a*
31 *one-time basis, any unallocated credits available pursuant to*
32 *Sections 17053.14, 23608.2, and 23608.3 as those sections read*
33 *prior to January 1, 2008.*

34 (h) The term “compliance period” as defined in Section 42(i)(1)
35 of the Internal Revenue Code is modified to mean, with respect to
36 any building, the period of 30 consecutive taxable years beginning
37 with the first taxable year of the credit period with respect thereto.

38 (i) Section 42(j) of the Internal Revenue Code shall not be
39 applicable and the following shall be substituted in its place:

1 The requirements of this section shall be set forth in a regulatory
2 agreement between the California Tax Credit Allocation Committee
3 and the housing sponsor, and this agreement shall be subordinated,
4 when required, to any lien or encumbrance of any banks or other
5 institutional lenders to the project. The regulatory agreement
6 entered into pursuant to subdivision (f) of Section 50199.14 of the
7 Health and Safety Code shall apply, provided that the agreement
8 includes all of the following provisions:

9 (1) A term not less than the compliance period.

10 (2) A requirement that the agreement be filed in the official
11 records of the county in which the qualified low-income housing
12 project is located.

13 (3) A provision stating which state and local agencies can
14 enforce the regulatory agreement in the event the housing sponsor
15 fails to satisfy any of the requirements of this section.

16 (4) A provision that the regulatory agreement shall be deemed
17 a contract enforceable by tenants as third-party beneficiaries
18 thereto, and that allows individuals, whether prospective, present,
19 or former occupants of the building, who meet the income
20 limitation applicable to the building the right to enforce the
21 regulatory agreement in any state court.

22 (5) A provision incorporating the requirements of Section 42
23 of the Internal Revenue Code as modified by this section.

24 (6) A requirement that the housing sponsor notify the California
25 Tax Credit Allocation Committee or its designee if there is a
26 determination by the Internal Revenue Service that the project is
27 not in compliance with Section 42(g) of the Internal Revenue Code.

28 (7) A requirement that the housing sponsor, as security for the
29 performance of the housing sponsor's obligations under the
30 regulatory agreement, assign the housing sponsor's interest in rents
31 that it receives from the project, provided that until there is a
32 default under the regulatory agreement, the housing sponsor is
33 entitled to collect and retain the rents.

34 (8) A provision that the remedies available in the event of a
35 default under the regulatory agreement that is not cured within a
36 reasonable cure period include, but are not limited to, allowing
37 any of the parties designated to enforce the regulatory agreement
38 to collect all rents with respect to the project; taking possession of
39 the project and operating the project in accordance with the
40 regulatory agreement until the enforcer determines the housing

1 sponsor is in a position to operate the project in accordance with
2 the regulatory agreement; applying to any court for specific
3 performance; securing the appointment of a receiver to operate
4 the project; or any other relief as may be appropriate.

5 (j) (1) The committee shall allocate the housing credit on a
6 regular basis consisting of two or more periods in each calendar
7 year during which applications may be filed and considered. The
8 committee shall establish application filing deadlines, the maximum
9 percentage of federal and state low-income housing tax credit
10 ceiling that may be allocated by the committee in that period, and
11 the approximate date on which allocations shall be made. If the
12 enactment of federal or state law, the adoption of rules or
13 regulations, or other similar events prevent the use of two allocation
14 periods, the committee may reduce the number of periods and
15 adjust the filing deadlines, maximum percentage of credit allocated,
16 and allocation dates.

17 (2) The committee shall adopt a qualified allocation plan, as
18 provided in Section 42(m)(1) of the Internal Revenue Code. In
19 adopting this plan, the committee shall comply with the provisions
20 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
21 Code.

22 (3) Notwithstanding Section 42(m) of the Internal Revenue
23 Code, the California Tax Credit Allocation Committee shall
24 allocate housing credits in accordance with the qualified allocation
25 plan and regulations, which shall include the following provisions:

26 (A) All housing sponsors, as defined by paragraph (3) of
27 subdivision (a), shall demonstrate at the time the application is
28 filed with the committee that the project meets the following
29 threshold requirements:

30 (i) The housing sponsor shall demonstrate that there is a need
31 for low-income housing in the community or region for which it
32 is proposed.

33 (ii) The project's proposed financing, including tax credit
34 proceeds, shall be sufficient to complete the project and shall be
35 adequate to operate the project for the extended use period.

36 (iii) The project shall have enforceable financing commitments,
37 either construction or permanent financing, for at least 50 percent
38 of the total estimated financing of the project.

39 (iv) The housing sponsor shall have and maintain control of the
40 site for the project.

1 (v) The housing sponsor shall demonstrate that the project
2 complies with all applicable local land use and zoning ordinances.

3 (vi) The housing sponsor shall demonstrate that the project
4 development team has the experience and the financial capacity
5 to ensure project completion and operation for the extended use
6 period.

7 (vii) The housing sponsor shall demonstrate the amount of tax
8 credit that is necessary for the financial feasibility of the project
9 and its viability as a qualified low-income housing project
10 throughout the extended use period, taking into account operating
11 expenses, a supportable debt service, reserves, funds set aside for
12 rental subsidies, and required equity, and a development fee that
13 does not exceed a specified percentage of the eligible basis of the
14 project prior to inclusion of the development fee in the eligible
15 basis, as determined by the committee.

16 (B) The committee shall give a preference to those projects
17 satisfying all of the threshold requirements of subparagraph (A)
18 if both of the following apply:

19 (i) The project serves the lowest income tenants at rents
20 affordable to those tenants.

21 (ii) The project is obligated to serve qualified tenants for the
22 longest period.

23 (C) In addition to the provisions of subparagraphs (A) and (B),
24 the committee shall use the following criteria in allocating housing
25 credits:

26 (i) Projects serving large families in which a substantial number,
27 as defined by the committee, of all residential units are low-income
28 units with three and more bedrooms.

29 (ii) Projects providing single-room occupancy units serving
30 very low income tenants.

31 (iii) Existing projects that are “at risk of conversion,” as defined
32 by paragraph (4) of subdivision (c).

33 (iv) Projects for which a public agency provides direct or indirect
34 long-term financial support for at least 15 percent of the total
35 project development costs or projects for which the owner’s equity
36 constitutes at least 30 percent of the total project development
37 costs.

38 (v) Projects that provide tenant amenities not generally available
39 to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section, Section 12206, and Section 17058 shall be set aside for allocation to rural areas as defined in Section 50199.21 of the Health and Safety Code. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project so long as there are eligible rural applications pending on October 31.

(k) Section 42(l) of the Internal Revenue Code shall be modified as follows:

The term “secretary” shall be replaced by the term “California Franchise Tax Board.”

(l) In the case where the state credit allowed under this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1989.

1 (p) The provisions of Section 11407(c) of Public Law 101-508,
2 relating to election to accelerate credit, shall not apply.

3 (q) (1) A corporation may elect to assign any portion of any
4 credit allowed under this section to one or more affiliated
5 corporations for each taxable year in which the credit is allowed.
6 For purposes of this subdivision, “affiliated corporation” has the
7 meaning provided in subdivision (b) of Section 25110, as that
8 section was amended by Chapter 881 of the Statutes of 1993, as
9 of the last day of the taxable year in which the credit is allowed,
10 except that “100 percent” is substituted for “more than 50 percent”
11 wherever it appears in the section, as that section was amended by
12 Chapter 881 of the Statutes of 1993, and “voting common stock”
13 is substituted for “voting stock” wherever it appears in the section,
14 as that section was amended by Chapter 881 of the Statutes of
15 1993.

16 (2) The election provided in paragraph (1):

17 (A) May be based on any method selected by the corporation
18 that originally receives the credit.

19 (B) Shall be irrevocable for the taxable year the credit is allowed,
20 once made.

21 (C) May be changed for any subsequent taxable year if the
22 election to make the assignment is expressly shown on each of the
23 returns of the affiliated corporations that assign and receive the
24 credits.

25 (r) Any unused credit may continue to be carried forward, as
26 provided in subdivision (k), until the credit has been exhausted.

27 This section shall remain in effect on or after December 1, 1990,
28 for as long as Section 42 of the Internal Revenue Code, relating
29 to low-income housing credits, remains in effect.

30 (s) The amendments to this section made by the act adding this
31 subdivision shall apply only to taxable years beginning on or after
32 January 1, 1994, except that paragraph (1) of subdivision (q), as
33 amended, shall apply to taxable years beginning on or after January
34 1, 1993.